

AMENDED IN SENATE APRIL 9, 2002

AMENDED IN SENATE MARCH 4, 2002

SENATE BILL

No. 1887

Introduced by Senator McPherson

February 22, 2002

An act to amend Section 2225 of, and to add Section 1708.3 to, the Civil Code, and to add Section 340.35 to the Code of Civil Procedure, relating to property of felons, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1887, as amended, McPherson. Property of felons.

Existing law imposes an involuntary trust upon the proceeds and profits, as defined, from the sale or transfer of any thing or right of a felon, the value of which is enhanced by the notoriety gained from the commission of the felony, and specifies procedures whereby the beneficiaries of the trust, as defined, may enforce their rights under the trust. ~~The California Supreme Court, in Keenan v. Superior Court of Los Angeles, held the provisions of this law, known as the "Son of Sam" law, were facially invalid under both the state and federal constitutions as violating protections on free speech.~~

~~This bill would state the intent of the Legislature to address the issues raised by the California Supreme Court in Keenan v. Superior Court of Los Angeles regarding the California "Son of Sam" law. Under existing law, profits are defined for these purposes to include anything sold or transferred, the value of which is enhanced by the notoriety gained from the commission of a felony, while proceeds are defined separately as the consideration received from the preparation, sale, or~~

sale of rights to written, audio, visual, or live presentations. Existing law imposes the trust for a 5-year period, as specified, on profits except for certain materials within the protection of the First Amendment. Existing law separately subjects the proceeds from the sale of a felon's story to a 5-year trust, as provided. All proceeds and profits that remain in trust under these provisions after 5 years go to a fund for payments primarily to victims of crime, informants, and protected government witnesses.

This bill would eliminate the involuntary trust provisions for proceeds from the sale by a convicted felon of the story of his or her crime, which would remain subject to the trust provisions for profits, where applicable.

Existing law requires a court, upon an adequate showing by the profiteer, to exclude from the involuntary trusts the inherent value of a thing sold, exclusive of the value added by the notoriety of the convicted felon.

This bill would eliminate the provision excluding from the trust the inherent value of a thing sold.

Existing law provides for causes of action at law for certain wrongs to others, including intentional wrongs, and provides for the award of exemplary damages under specified circumstances against a defendant found guilty in a civil case of oppression, fraud, or malice. In addition, existing law allows the victim of a crime to collect restitution payments from the perpetrator, under specified circumstances. Existing law gives a beneficiary of the involuntary trusts described above a cause of action to recover his or her interest in the trusts.

This bill would create a new cause of action for a beneficiary, without time limitation, against a convicted felon, his or her representative, or a profiteer, as defined, to recover damages from the convicted felon for physical, mental, or emotional injury, or pecuniary loss proximately caused by the convicted felon's crime, including exemplary damages. This cause of action would not be limited to the contents of any involuntary trusts created in this law, and would not be limited to those types of injury subject to existing restitution provisions.

This bill would declare that its provisions, including those affecting time limitations on the filing of actions, are retroactive regarding any case as to which there has not been a final adjudication prior to January 1, 2003.

The bill would declare that it is to take effect immediately as an urgency statute.



Vote: ²/₃. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. It is the intent of the Legislature to address the issues raised by the California Supreme Court in Keenan v. Superior Court of Los Angeles regarding the California “Son of Sam” law.~~

SECTION 1. Section 1708.3 is added to the Civil Code, to read:

1708.3. (a) All terms in this section shall have the same meaning given them in Section 2225.

(b) An action may be brought by a beneficiary against a convicted felon, representative of the felon, or profiteer of a felony to recover damages from the convicted felon for physical, mental, or emotional injury, or pecuniary loss proximately caused by the convicted felon as a result of the crime for which the felon was convicted as well as exemplary damages as defined in Section 3294.

(c) An action pursuant to this section may be brought in the superior court of the county in which the beneficiary resides, or of the county in which the convicted felon resides, or of the county in which profits are located.

(d) If the court determines that a beneficiary is entitled to profits pursuant to this section, the court shall order the payment from the convicted felon, the representative of the felon, or the profiteer of the felony.

(e) The distribution of damages and profits under this section shall also be governed by subdivision (c) of Section 2225.

SEC. 2. Section 2225 of the Civil Code is amended to read:

2225. (a) As used in this section:

(1) “Convicted felon” means any person convicted of a felony, or found not guilty by reason of insanity of a felony committed in California, either by a court or jury trial or by entry of a plea in court.

(2) “Felony” means a felony defined by any California or United States statute.

(3) (A) “Representative of the felon” means any person or entity receiving proceeds or profits by designation of that felon, on

1 behalf of that felon, or in the stead of that felon, whether by the
2 felon's designation or by operation of law.

3 (B) "Profiteer of the felony" means any person who sells or
4 transfers for profit any memorabilia or other property or thing of
5 the felon, the value of which is enhanced by the notoriety gained
6 from the commission of the felony for which the felon was
7 convicted. This subparagraph shall not apply to any media entity
8 reporting on the felon's story or on the sale of the materials,
9 memorabilia, or other property or thing of the felon. Nor shall it
10 apply to the sale of the materials, as the term is defined in
11 paragraph ~~(6)~~ (5), where the seller is exercising his or her first
12 amendment rights. This subparagraph also shall not apply to the
13 sale or transfer by a profiteer of any other expressive work
14 protected by the First Amendment unless the sale or transfer is
15 primarily for a commercial or speculative purpose.

16 (4) (A) "Beneficiary" means a person who, under applicable
17 law, other than the provisions of this section, has or had a right to
18 recover damages from the convicted felon for physical, mental, or
19 emotional injury, or pecuniary loss proximately caused by the
20 convicted felon as a result of the crime for which the felon was
21 convicted.

22 (B) If a beneficiary described in subparagraph (A) has died,
23 "beneficiary" also includes a person or estate entitled to recover
24 damages pursuant to Chapter 4 (commencing with Section
25 377.10) of Title 3 of Part 2 of the Code of Civil Procedure.

26 (C) If a person has died and the death was proximately caused
27 by the convicted felon as a result of the crime for which the felon
28 was convicted, "beneficiary" also includes a person described in
29 Section 377.60 of the Code of Civil Procedure and any beneficiary
30 of a will of the decedent who had a right under that will to receive
31 more than 25 percent of the value of the estate of the decedent.

32 (5) ~~"Beneficiary's interest" means that portion of the proceeds~~
33 ~~or profits necessary to pay the following:~~

34 ~~(A) In the case of a beneficiary described in subparagraph (A)~~
35 ~~or (B) of paragraph (4), those damages that, under applicable law,~~
36 ~~other than the provisions of this section, the beneficiary has or had~~
37 ~~a right to recover from the convicted felon for injuries proximately~~
38 ~~caused by the convicted felon as a result of the crime for which the~~
39 ~~felon was convicted.~~

~~(B) In the case of a beneficiary described in subparagraph (C) of paragraph (4), those damages that, under all the circumstances of the case, may be just.~~

~~(C) A beneficiary's interest shall be reduced by the following amount:~~

~~(i) Money paid to the beneficiary from the Restitution Fund because of the crime for which the felon was convicted.~~

~~(ii) Money paid to the beneficiary by the convicted felon because of a requirement of restitution imposed by a court in connection with the crime for which the felon was convicted.~~

~~(iii) Money paid to the beneficiary because of a judgment against the convicted felon based upon the crime for which the felon was convicted.~~

~~(D) In the case of an unsatisfied existing judgment or order of restitution against the convicted felon and in favor of a beneficiary, any money paid to the beneficiary pursuant to this section shall be applied to reduce the amount of the unsatisfied judgment or order.~~

~~(6) "Materials" means books, magazine or newspaper articles, movies, films, videotapes, sound recordings, interviews or appearances on television and radio stations, and live presentations of any kind.~~

~~(7) "Story" means a depiction, portrayal, or reenactment of a felony and shall not be taken to mean a passing mention of the felony, as in a footnote or bibliography.~~

~~(8) "Sale" includes lease, license, or any other transfer or alienation taking place in California or elsewhere.~~

~~(9) "Proceeds" means all fees, royalties, real property, or other consideration of any and every kind or nature received by or owing to a felon or his or her representatives for the preparation for the purpose of sale of materials, for the sale of the rights to materials, or the sale or distribution by the convicted felon of materials whether earned, accrued, or paid before or after the conviction. It includes any interest, earnings, or accretions upon proceeds, and any property received in exchange for proceeds.~~

~~(10)~~
~~(6) "Profits" means all income from anything sold or transferred by the felon, a representative of the felon, or a profiteer of the felony, including any right, the value of which thing or right is enhanced by the notoriety gained from the commission of a felony for which a convicted felon was convicted. It includes any~~

1 *interest, earnings, or accretions upon profits, and any property*
2 *received in exchange for profits.* This income may have been
3 accrued, earned, or paid before or after the conviction. However,
4 voluntary donations or contributions to a defendant to assist in the
5 defense of criminal charges shall not be deemed to be “profits,”
6 provided the donation or contribution to that defense is not given
7 in exchange for some material of value.

8 ~~(b) (1) All proceeds from the preparation for the purpose of~~
9 ~~sale, the sale of the rights to, or the sale of materials that include~~
10 ~~or are based on the story of a felony for which a convicted felon~~
11 ~~was convicted, shall be subject to an involuntary trust for the~~
12 ~~benefit of the beneficiaries set forth in this section. That trust shall~~
13 ~~continue until five years after the time of payment of the proceeds~~
14 ~~to the felon or five years after the date of conviction, whichever is~~
15 ~~later. If an action is filed by a beneficiary to recover his or her~~
16 ~~interest in a trust within those time limitations, the trust character~~
17 ~~of the property shall continue until the conclusion of the action. At~~
18 ~~the end of the five-year trust period, any proceeds that remain in~~
19 ~~trust that have not been claimed by a beneficiary shall be~~
20 ~~transferred to the Controller, to be allocated to the Restitution Fund~~
21 ~~for the payment of claims pursuant to Section 13969 of the~~
22 ~~Government Code.~~

23 ~~(2)~~ All profits shall be subject to an involuntary trust for the
24 benefit of the beneficiaries set forth in this section. That trust shall
25 continue until five years after the time of payment of the profits to
26 the felon or five years after the date of conviction, whichever is
27 later. If an action is filed by a beneficiary to recover his or her
28 interest in a trust within those time limitations, the trust character
29 of the property shall continue until the conclusion of the action. At
30 the end of the five-year trust period, any profits that remain in trust
31 that have not been claimed by a beneficiary shall be transferred to
32 the Controller, to be allocated to the Restitution Fund for the
33 payment of claims pursuant to Section 13969 of the Government
34 Code.

35 ~~(3) Notwithstanding paragraph (2), in the case of a sale or~~
36 ~~transfer by a profiteer of the felony, the court in an action under~~
37 ~~subdivision (c) shall, upon an adequate showing by the profiteer~~
38 ~~of the felony, exclude from the involuntary trust that portion of the~~
39 ~~profits that represents the inherent value of the memorabilia,~~
40 ~~property, or thing sold or transferred and exclusive of the amount~~

1 ~~of the enhancement to the value due to the notoriety of the~~
2 ~~convicted felon.~~

3 ~~(e) (1) —~~

4 (2) Any beneficiary may bring an action against a convicted
5 felon, representative of the felon, or a profiteer of a felony to
6 recover his or her interest in the trust established by this section.

7 ~~(2)~~

8 (3) That action may be brought in the superior court of the
9 county in which the beneficiary resides, or of the county in which
10 the convicted felon resides, or of the county in which proceeds or
11 profits are located.

12 ~~(3)~~

13 (4) If the court determines that a beneficiary is entitled to
14 ~~proceeds or profits pursuant to this section, the court shall order the~~
15 ~~payment from proceeds or profits that have been received, and, if~~
16 ~~that is insufficient, from proceeds or profits that may be received~~
17 ~~in the future the convicted felon, the representative of the felon, or~~
18 ~~the profiteer of the felony.~~

19 ~~(d)~~

20 (c) If there are two or more beneficiaries and if the available
21 ~~proceeds or damages and~~ profits are insufficient to pay all
22 beneficiaries, the ~~proceeds or damages and~~ profits shall be
23 equitably apportioned among the beneficiaries taking into account
24 the impact of the crime upon them.

25 Prior to any distribution of any ~~proceeds damages or profits~~ to
26 a beneficiary, the court shall determine whether the convicted
27 felon has failed to pay any portion of a restitution fine or penalty
28 fine imposed by a court, or any restitution imposed as a condition
29 of probation. The court shall also determine whether the felon is
30 obligated to reimburse a governmental entity for the costs of his
31 or her defense and whether a portion of the ~~proceeds damages or~~
32 ~~profits~~ is needed to cover his or her reasonable attorney's fees
33 incurred in the criminal proceeding related to the felony, or any
34 appeal or other related proceeding, or in the defense of the action
35 brought under this section. The court shall order payment of these
36 obligations prior to any payment to a beneficiary, except that 60
37 percent of the ~~proceeds-damages~~ or profits shall be reserved for
38 payment to the beneficiaries.

39 ~~(e)~~

1 (d) (1) The Attorney General may bring an action to require
2 ~~proceeds or profits~~ received by a convicted felon to be held in an
3 express trust in a bank authorized to act as a trustee.

4 (2) An action may be brought under this subdivision within one
5 year after the receipt of ~~proceeds or profits~~ by a convicted felon or
6 one year after the date of conviction, whichever is later.

7 That action may be brought in the superior court of any county
8 in which the Attorney General has an office.

9 (3) If the Attorney General proves that the ~~proceeds or profits~~
10 ~~are proceeds or profits~~ from the sale of a ~~story or~~ thing of value that
11 are subject to an involuntary trust pursuant to this section, and that
12 it is more probable than not that there are beneficiaries within the
13 meaning of this section, the court shall order that all ~~proceeds or~~
14 ~~profits~~ be deposited in a bank and held by the bank as trustee of the
15 trust until an order of disposition is made by a court pursuant to
16 subdivision (d), or until the expiration of the period specified in
17 subdivision (b).

18 (4) If the Attorney General prevails in an action under this
19 subdivision, the court shall order the payment from the ~~proceeds~~
20 ~~or profits~~ to the Attorney General of reasonable costs and
21 attorney's fees.

22 ~~(f)~~

23 (e) (1) In any action brought pursuant to this section, upon
24 motion of a party the court shall grant a preliminary injunction to
25 prevent any waste of ~~proceeds or profits~~ if it appears that the
26 ~~proceeds or profits~~ are subject to the provisions of this section, and
27 that they may be subject to waste.

28 (2) Upon motion of the Attorney General or any potential
29 beneficiary, the court shall grant a preliminary injunction against
30 a person against whom an indictment or information for a felony
31 has been filed in superior court to prevent any waste of ~~proceeds~~
32 ~~or profits~~ if there is probable cause to believe that the ~~proceeds or~~
33 ~~profits~~ would be subject to an involuntary trust pursuant to this
34 section upon conviction of this person, and that they may be
35 subject to waste.

36 ~~(g)~~

37 (f) Any violation of an order of a court made pursuant to this
38 section shall be punishable as contempt.

39 ~~(h)~~

1 (g) The remedies provided by this section are in addition to
2 other remedies provided by law.

3 No period of limitations, except those provided by this section,
4 shall limit the right of recovery under this section.

5 (h) *The amendments to this section enacted at the 2002 portion*
6 *of the 2001–02 Regular Session shall apply to any action*
7 *commenced before, on, or after January 1, 2003, including any*
8 *action otherwise barred by a limitation of time in effect prior to*
9 *January 1, 2003, thereby reviving those causes of action that had*
10 *lapsed or technically expired under the law existing prior to*
11 *January 1, 2003. However, nothing in this subdivision is intended*
12 *to revive an action as to which there has been a final adjudication*
13 *prior to January 1, 2003.*

14 SEC. 3. Section 340.35 is added to the Code of Civil
15 Procedure, to read:

16 340.35. An action brought pursuant to Section 1708.3 of the
17 Civil Code may be commenced at any time.

18 ~~SEC. 2.~~

19 SEC. 4. This act is an urgency statute necessary for the
20 immediate preservation of the public peace, health, or safety
21 within the meaning of Article IV of the Constitution and shall go
22 into immediate effect. The facts constituting the necessity are:

23 In order for the Legislature to initiate procedures to clarify the
24 status of existing law regarding the issues addressed by this act, it
25 is necessary that this act take immediate effect.

